

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

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KENWOOD APPLIANCES LUXEMBOURG,	:	
S.A.,	:	
	:	Civil Action No.: 2:10-cv-06356-SRC-MAS
Plaintiff,	:	
	:	Hon. Stanley R. Chesler
vs.	:	
	:	<b>PROPOSED JOINT DISCOVERY PLAN</b>
HOME DEPOT U.S.A., INC., CHINA SINGFUN	:	
ELECTRIC GROUP CO., LTD., KENWORLD	:	
INTERNATIONAL CO., LTD.,	:	
	:	
Defendants.	:	
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1. Set forth the name of each attorney appearing, the firm name, address and telephone number and facsimile number of each, designating the party represented.

Kenwood Appliances Luxembourg, S.A.

Home Depot U.S.A., Inc.

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2. Set forth a factual description of the case, include the causes of action and affirmative defenses asserted.

This case arises under the Lanham Act, 15 U.S.C. §§ 1051-1127, for trademark infringement. In sum, Plaintiff, Kenwood Appliances Luxembourg, S.A. (hereinafter, “Kenwood”), alleges that Defendants, Home Depot U.S.A., Inc. (hereinafter, “Home Depot”), China Singfun Electric Group Co., Ltd. (hereinafter, “China Singfun”), and Kenworld International Co., Ltd. (hereinafter, “Kenworld”) intentionally engaged in infringing conduct upon the “KENWOOD” trademark by the alleged infringing use of the alleged “KENWORLD” trademark.

In sum, Kenwood alleges the following causes of action: (1) Defendants’ use of the “KENWORLD” mark intentionally causes confusion, mistake, and deception among the general public rendering Defendants liable under 15 U.S.C. § 1125(a) and renders this an exceptional case under 15 U.S.C. § 1117(a); (2) Defendants’ use of the “KENWORLD” mark causes dilution of the famous “KENWOOD” trademark as defined under 15 U.S.C. § 1125(c) decreasing the distinctiveness, value, reputation, and goodwill; (3) Defendants’ use of the “KENWORLD” mark and trade name constitutes an intentional and unlawful infringement of the “KENWOOD” trademark under N.J.S.A. § 56:3-13.16 and unlawful dilution under N.J.S.A. § 56:3-13.20; (4) Defendants’ acts constitute unfair trade practices, unfair competition, and trademark infringement pursuant to N.J.S.A. § 56:4-1 *et seq.* and New Jersey common law.

Home Depot asserts the following affirmative defenses: (1) the Complaint fails to state a claim for which relief may be granted; (2) Plaintiff has suffered no damages; (3) Plaintiff cannot demonstrate any likelihood that the public has been confused as to source or affiliation; (4) the public does not associate Kenworld-branded space heaters with Plaintiff; (5) Plaintiff cannot demonstrate that Home Depot’s use of the Kenworld Mark is likely to cause dilution by blurring or tarnishment; (6) Plaintiff cannot demonstrate that the Kenwood Mark used on space heaters is famous within the meaning of 15 U.S.C. § 1125(c); (7) Plaintiff is estopped from claiming any harm or damages; (8) Plaintiff’s complaint is barred by the doctrine of laches; (9) Plaintiff’s complaint is barred by the doctrine of acquiescence. Defendant Home Depot also adopts and incorporates by reference any and all other defenses asserted or to be asserted by any other defendant to the extent that Home Depot may share in or be entitled to assert such defense.

3. Has this action been: Settled: No Discontinued: No  
If so, has there been a Stipulation/Dismissal filed?  
Yes \_\_\_\_\_ No \_\_\_\_\_
4. Have settlement discussions taken place? Yes \_\_\_\_\_ No X  
If so, when? \_\_\_\_\_  
(a) What was the plaintiff's last demand?  
(1) Monetary demand: \$ \_\_\_\_\_  
(2) Non-monetary demand: \_\_\_\_\_  
(b) What was defendant's last offer?  
(1) Monetary demand: \$ \_\_\_\_\_  
(2) Non-monetary demand: \_\_\_\_\_
5. The parties [have X have not \_\_\_\_\_] exchanged the information required by Fed. R. Civ. P. (26)(a)(1). If not, state the reason therefore.
6. Explain any problems in connection with completing the disclosures required by Fed. R. Civ. P. 26(a)(1).  
None.
7. The parties [have \_\_\_\_\_ have not X] conducted discovery other than the above disclosures. If so describe.
8. The parties [have X have not \_\_\_\_\_] met pursuant to Fed. R. Civ. P. 26(f).  
(a) If not, state the reason therefore.  
Not applicable.  
(b) If so, state the date of the meeting and persons in attendance.  
Mike Potenza and Rudolph Pino met on April 18, 2011.

9. The following [is  X  is not \_\_\_\_\_] a proposed joint discovery plan.

(a) Discovery is needed on the following subjects:

Use of the "KENWORLD" mark by Home Depot and the promotion, advertising, and sale of space heaters sold under the "KENWORLD" mark. The level of recognition and goodwill enjoyed by Plaintiff's mark. The purported likelihood of confusion between Plaintiff's space heaters and "KENWORLD"-branded space heaters. Damages or lost sales as a result of space heaters sold under the "KENWORLD" mark.

(b) Discovery [\_\_\_\_\_ should not  X ] be conducted in phases or be limited to particular issues. If so, explain.

No.

(c) Maximum of  25  Interrogatories by each party to each other party.

(d) Maximum of  10  depositions to be taken by each party.

(e) Plaintiff's expert report due on  February 15, 2012.

(f) Defendant's expert report due on  March 15, 2012.

(g) Motions to amend or to add parties to be filed by  September 15, 2011.

(h) Dispositive motions to be served within  60  days of completion of discovery.

(i) Factual discovery to be completed by  December 15, 2011.

(j) Expert discovery to be completed by  May 1, 2012.

(k) Set forth any special discovery mechanism or procedure requested, including data preservation orders or protective orders.

Plaintiff and Defendant Home Depot U.S.A., Inc. may request confidentiality orders.

(l) A pretrial conference may take place on  June 15, 2012

(m) Trial date:  July 16, 2012  (  X  Jury Trial; \_\_\_\_\_ Non-Jury Trial).

10. Do you anticipate any special discovery needs (i.e., videotape/telephone depositions, problems with out-of state witnesses or documents, etc.)? Yes \_\_\_\_\_ No  X .

11. Do you anticipate any issues about disclosure or discovery of electronically stored information, including the form or forms in which it should be produced?  
Yes \_\_\_\_\_ No  X .

If so how will electronic discovery or data be disclosed or produced? Describe any agreements reached by the parties regarding the same, including costs of discovery, production, related software, licensing agreements, etc.

12. Do you anticipate any discovery problem(s) not listed above? Describe.  
Yes \_\_\_\_\_ No  X .

13. State whether this case is appropriate for voluntary arbitration (pursuant to L. Civ.R. 201.1 or otherwise), mediation (pursuant to L. Civ.R. 301.1 or otherwise), appointment of a special master or other special procedure. If not, explain why and state whether any such procedure may be appropriate at a later time (i.e., after exchange of pretrial disclosures, after completion of depositions, after disposition of dispositive motions, etc).

This case may be appropriate for mediation.

14. Is this case appropriate for bifurcation? Yes \_\_\_\_\_ No  X

15. An interim status/settlement conference (with clients in attendance), should be held in  April 16, 2012 .

16. We [do \_\_\_\_\_ do not  X ] consent to the trial being conducted by a Magistrate Judge.

s/ Brian P. Mitchell / April 19, 2011   
Attorney(s) for Plaintiff

s/ Michael R. Potenza / April 19, 2011   
Attorney(s) for Defendant,  
Home Depot U.S.A., Inc.